

# **Exhibit 20**

**REPORTER'S RECORD**  
**VOLUME 3**  
**TRIAL COURT CAUSE NO. D-1-GV-14-000388**

THE STATE OF TEXAS *ex* ) IN THE DISTRICT COURT  
*rel.* MYRON D. WINKELMAN )  
AND STEPHANI MARTINSEN, )  
Plaintiffs, )  
VS. ) TRAVIS COUNTY, TEXAS  
CVS HEALTH CORPORATION, )  
Defendant. ) 126TH JUDICIAL DISTRICT

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**HEARING ON TEMPORARY INJUNCTION**

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On the 31st day of January, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Amy Clark Meachum, Judge Presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

1 THE COURT: Mr. Gibbons, if you could  
2 come back up. We are starting with him, right.

3 MS. MAINIGI: Yes.

4 THE COURT: Have a seat. You're still  
5 under oath. Mr. Salisbury, you may proceed.

6 MR. SALISBURY: Thank you, Your Honor.

7 **THOMAS GIBBONS,**  
8 having been previously duly sworn, testified as  
9 follows:

10 **CONTINUED DIRECT EXAMINATION**

11 BY MR. SALISBURY:

12 Q. Mr. Gibbons, when we concluded yesterday, we  
13 were looking at Plaintiffs' Exhibit 151. Do you recall  
14 that?

15 A. Yes, I do.

16 Q. And we established that Plaintiffs'  
17 Exhibit 151 is a set of interrogatory responses that  
18 you verified, correct?

19 A. That is correct.

20 Q. And if you could look now to the first  
21 interrogatory and the response to that. It begins on  
22 Page 8, PX 151-08. Do you have that in front of you?

23 A. Yes, I do.

24 Q. And Interrogatory No. 1 asks for an  
25 explanation for the basis for CVS' interpretation of

1 what quantity the individual could receive at that 9.99  
2 price point.

3 Q. Now, who decided which drugs to include on --  
4 on this list of covered medications?

5 A. CVS did.

6 Q. And -- and who decided which specific  
7 quantities to include on this list?

8 A. CVS did.

9 Q. And who decided the price points of these  
10 specific drugs?

11 A. CVS did.

12 Q. Now, how would you describe the size of the  
13 HSP Program, the Health Savings Pass Program, relative  
14 to -- so how would you describe, Mr. Gibbons, the size  
15 of the HSP program under alternate prescription  
16 benefits versus the size of cash transactions at CVS?

17 A. Health Savings Pass is a very small number of  
18 transactions. It was smaller -- it was certainly  
19 smaller than cash transactions.

20 Q. And did you have any reason to believe that  
21 the HSP price would be the most frequent price for a  
22 given -- on a given drug at a given store on a given  
23 day?

24 A. I have no reason to believe that.

25 Q. And why not?

1           A.     Again, in comparison to cash transactions,  
2     health savings pass was a very small number of drugs  
3     and a very small number of transactions.

4           Q.     Now, during your time in -- in the pharmacy  
5     industry, including your time at Caremark, are you  
6     aware of PBMs or other payers taking the position that  
7     HSP or other membership program pricing is a discount  
8     for purposes of their usual and customary definitions?

9           A.     Would you ask me that again?

10          Q.     Sure. The -- the term discount, is that often  
11     in usual and customary definitions?

12          A.     There are some contracts that would have  
13     discounts listed as -- in the usual and customary  
14     definition.

15          Q.     Okay. And are you aware of membership  
16     programs of the type that CVS, had ever falling into  
17     the definition of discount?

18          A.     As a discount? No.

19          Q.     And -- and what is your general understanding  
20     as to why that is the case?

21          A.     Discounts within the pharmacy industry tend to  
22     be either a certain percentage or a certain amount off  
23     of a price, if and where they occur. Health Savings  
24     Pass was an entirely different pricing strategy and for  
25     a different pricing construct that was offered out to

1 the population. It just wasn't a discount.

2 Q. Now, is HSP still offered?

3 A. No, it is not.

4 Q. When did it stop being offered?

5 A. I believe in February of 2016.

6 Q. And whose decision was it to discontinue the  
7 program?

8 A. Mine and after discussions with other internal  
9 partners.

10 Q. And why was that decision made, based on your  
11 knowledge?

12 A. It -- it was a program that had -- it really  
13 outlived its -- its -- its purpose. The number of  
14 drugs that were available in the program continued to  
15 shrink. It wasn't a very rich program from a member  
16 benefit. It only covered certain generics. It didn't  
17 cover brands.

18 The marketplace reaction to some of  
19 Walmart's and others creating \$4 and \$10 generic price  
20 points was beginning to wane, and it was just a program  
21 that we just didn't need anymore.

22 Q. Now, has CVS operated the membership program  
23 since it discontinued HSP?

24 A. No.

25 Q. Are you aware of any plans to do so at CVS in

**REPORTER'S CERTIFICATE**

STATE OF TEXAS                    )  
  )  
COUNTY OF TRAVIS                )

I, Chavela V. Crain, Official Court Reporter in and for the 53rd District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 16th day of February, 2018.

/s/ Chavela V. Crain  
Chavela V. Crain, Texas CSR No. 3064  
Expiration Date: 12/31/2019  
Official Court Reporter, 53rd District Court  
Travis County, Texas  
P.O. Box 1748, Austin, Texas 78767  
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**REPORTER'S CERTIFICATE**

STATE OF TEXAS                    )  
  )  
COUNTY OF TRAVIS                )

I, Alicia Racanelli, Official Court Reporter in and for the 201st District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 16th day of February, 2018.

/s/ Alicia Racanelli  
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